IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7424 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALITBHAI KESHAVBHAI VANKAR

Versus

DIVISIONAL CONTROLLER

Appearance:

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Petitioner

MS MAYA DESAI for MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/08/2000

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

2. The petitioner, a Driver in the Gujarat State Road Transport Corporation was dismissed on misconduct of leaving absent from duty without leave and sanction

thereof. An industrial dispute has been raised by the petitioner which has been referred to the Labour Court, Baroda and under the impugned award, the Labour Court has directed the respondent to reinstate the petitioner back in service but backwages were not awarded. Challenge has been made by the petitioner to that part of the award of the Labour Court in this petition.

3. Learned counsel for the petitioner submitted that it is not a case of any misconduct. The petitioner submitted medical certificate and also reported to the employer that he has a chest pain and is unable to attend the duty and in view of these facts, the misconduct as what alleged against the petitioner could not have been taken to be a deliberate misconduct or a misconduct which warrants the penalty of withholding of the backwages for the interim period by the Labour Court.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

5. It is not the case of the learned counsel for the petitioner that the misconduct as alleged against the petitioner by the Corporation has not been accepted by the Labour Court. So far as the medical certificate is concerned, learned counsel for the petitioner does not dispute that it has been submitted for the period from 16-4-1983 to 22-4-1983. The absence period of the petitioner was from 16-4-83 to 9-5-83. Learned counsel for the petitioner does not dispute that for the remaining period the petitioner has not produced any medical certificate. His only contention is that the petitioner reported to the employer that he is having chest pain. It is difficult to accept the reason for remaining absent of an employee and rightly it was taken as absent from duty which is a misconduct and rightly chargesheet has been given and inquiry has been conducted. However, in the facts of this case, the Labour Court has considered the penalty to be disproportionate to the guilt and interference has been made therein and the penalty of dismissal from services has been set aside but so far as the misconduct is concerned, it was not held by the Labour Court that it is not a misconduct committed by the petitioner. Withholding of backwages by the Labour Court is not a punishment and the Labour Court where it is satisfied that the penalty of dismissal is excessive and disproportionate, it should have substituted its own penalty for it but that has not been done. However it has ordered for withholding of the backwages and in the

facts of this case no interference is called for in the award of the Labour Court.

6. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

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zgs/-